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ABSTRACT

Many states have statutes authorizing school districts to indemnify their employees against financial liability to persons claiming injury on school property or in school-related activities. Some statutes specifically permit the district to secure insurance for this purpose. Relatively few states, however, require either kind of protection. A few comprehensive mandatory statutes, such as those in Illinois and New Jersey, cover not only financial damages but all other expenses incurred in contesting such claims. Indemnification statutes do not, of course, cover acts of malfeasance or willful neglect of duty, although New Jersey provides for legal expenses in criminal cases where the accused is not convicted, and Florida permits reimbursement in such cases. Massachusetts limits coverage to actions for negligence but otherwise provides a good mandatory statute. (Author/JG)

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A Legal Memorandum

NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS
1904 Association Drive Reston, Va. 22091

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January 1977

Concerning

STATUTORY PROTECTION FOR PRINCIPALS
Part II - Protection Against Tort Liability

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Second only to job security for many educators is the need for protection against financial liability to persons claiming injury on school property or in school-related activities. Recent years have witnessed greatly increased public awareness of the possibilities of such legal action. We all hear daily of the negligence claims arising from automobile accidents and malpractice claims in the medical field.

While the actual number and size of awards in education-related cases has not grown substantially, the number of suits threatened and initiated has been sufficient to cause many educators to have sleepless nights. Even if the claim is frivolous, it will often require engaging a lawyer to defend against it, an expense which in itself can be more than negligible.

Insurance Protection

The primary response to the threat of liability for legal damages has been the development of insurance coverage. NASSP itself pioneered in this effort, securing its first policy in 1969. Since that time, all members have been automatically entitled to broad-scale protection against damages of up to $300,000, as well as reimbursement of the reasonable costs of legal defense.

Many principals, and other educational administrators have additional protection through insurance provided by state associations or their own school districts. In many districts, too, principals are afforded legal defense by school district counsel, especially where the district itself is a party defendant along with the principal and other district employees, and where all are sued in their official capacities.

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Nevertheless, many principals and other educators are not offered such protection through their districts and the costs of insurance coverage are rising rapidly. Most school districts which provide insurance protection are not required to do so, and with increasing fiscal pressures upon them, it will not be surprising if many begin to withdraw such protection.

Accordingly, principals and other educators in many states may want to consider the desirability of seeking additional protection against financial liability arising from job-related legal claims through state legislation.

Mandatory versus Permissive Legislation

Many states have statutes authorizing school districts to indemnify their employees. Sometimes the statute specifically provides that the school district may secure insurance for this purpose. Relatively few, however, require them to provide either kind of protection. (See box below.)

States with Mandatory "Save Harmless" Statutes

California	Nevada
Connecticut	New Jersey
Iowa	New York
Illinois	Oregon*
Massachusetts	Texas**

* Defense of employees is discretionary
** Limited to motor vehicle claims

Types of Coverage

A few of the most comprehensive mandatory statutes cover not only financial damages which may be awarded against employees, but all other expenses which may be incurred in defending against such claims. The Illinois statute quoted below is a good example of this kind of law, including not only negligence claims but those arising from alleged violation of civil rights as well. Note that it covers not only supervisors and teachers, but also student teachers.

Illinois Sec. 34-18.1 Protection from suit

The board of education shall insure or indemnify and protect the board, any member of the board or any agent, employee, teacher, student teacher, officer or member of the supervisory staff of the school district against financial loss and expense, including reasonable legal fees and costs arising out of any claim, demand, suit, or judgment by reason of alleged negligence, alleged violation of civil rights occurring on or after

September 5, 1967, or alleged wrongful act resulting in death or bodily injury to any person or accidental damage to or destruction of property, within or without the school premises, provided such board member, agent, employee, teacher, student teacher, officer or member of the supervisory staff, at the time of the occurrence was acting under the direction of the board within the course or scope of his duties.

Indemnification statutes do not, of course, cover acts of malfeasance or willful and wanton neglect of duty. Some further limit the area of indemnity such as to injuries resulting from care of property, or from use of motor vehicles (Texas).

Some states have also limited the amount of damages for which they will be liable (Wisconsin). In such cases it is possible that the individual might be held liable in excess of the statutory limit.

Only a few of the mandatory statutes specifically require legal defense to be provided by the school district, or for indemnification of such costs.

Others make legal defense discretionary with the board, or do not mention it at all, leaving room for question whether such expenses will be covered. The state of New Jersey provides for legal defense costs even in the case of criminal actions, if the accused is not convicted.

New Jersey Sec. 18A:16-6 Indemnity of Cfficers and Employees Against Civil Actions

Whenever any civil action has been or shall be brought against any person holding any office, position or employment under the jurisdiction of the board of education, including any student teacher, for any act or omission arising out of and in the course of the performance of the duties as such office, position, employment or student teaching, the board shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom; and said board may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.

Sec. 18A:16-6.1 Indemnity of Officers and Employees in Certain Criminal Actions

Should any criminal action be instituted against any such person for any such act or omission and should such proceeding be dismissed or result in a final disposition in favor of such person, the board of education shall reimburse him for the costs of defending such proceeding, including reasonable counsel fees and expenses of the original hearing or trial and all appeals.

The state of Florida has only recently enacted an interesting statute concerning the control of conduct, a part of which limits the liability of teachers and principals for actions taken under the law.

Sec. 232.275 Florida Statutes

Liability of teacher or principal. -- Except in the case of excessive force or cruel and unusual punishment a teacher or other member of the instructional staff, a principal or his designated representative, or a bus driver shall not be civilly or criminally liable for any action carried out in conformity with the state board and district school board rules regarding the control, discipline, suspension, and expulsion of students.

Another section of the new act authorizes legal service to be provided by school districts to officers and employees charged with civil or criminal actions, provided they are successful in defending against the action. This portion of the statute, however, is permissive rather than mandatory.

Massachusetts limits coverage to actions for negligence, but provides a good model of a clear mandatory statute.

Massachusetts Chapter 41, Gen. Laws, Sec. 100(c) (1970)

...a city, town or regional school district shall...indemnify any person in the employ of its school department...for expenses or damages sustained by him by reason of an action or claim against him arising out of his negligence....

Chapter 71, Sec. 38(L) was added in 1971, authorizing local governments and school districts to purchase insurance in order to fulfill the above obligation.

Conclusion and Recommendations

Members in each state should find out what, if any, statutory protection against personal liability is provided in their state. If it is deficient, enactment of a more complete "save harmless" statute might be a good choice as an immediate legislative goal. Obviously, a mandatory statute covering both damages and legal defense is best. If this is not attainable, however, even a permissive statute will provide the basis for negotiation of needed protection as an employment benefit in your district. In light of the rising costs of group liability insurance policies, your national association urges state-by-state reviews of this increasingly serious situation to be followed by an appropriate course of action.

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